

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #10	CCRB Case #: 201710338	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/13/2017 3:00 AM	Location of Incident: [REDACTED]	Precinct: 52	18 Mo. SOL 6/13/2019	EO SOL 6/13/2019	
Date/Time CV Reported Thu, 12/14/2017 1:48 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 12/14/2017 1:48 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Doherty	12054	954743	052 PCT
2. POM Brandon Gembecki	01517	949015	052 PCT
3. SGT Amadeo Oktrova	01914	949413	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Dagoberto Rodriguez	02631	944944	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Amadeo Oktrova	Abuse: Sergeant Amadeo Oktrova threatened to arrest § 87(2)(b) and § 87(2)(b)	[REDACTED]
B.POM Brandon Gembecki	Abuse: Police Officer Brandon Gembecki threatened to arrest § 87(2)(b) and § 87(2)(b)	[REDACTED]
C.SGT Amadeo Oktrova	Abuse: Sergeant Amadeo Oktrova searched § 87(2)(b) in the Bronx.	[REDACTED]
D.POM Brian Doherty	Abuse: Police Officer Brian Doherty searched § 87(2)(b) in the Bronx.	[REDACTED]
E.POM Brandon Gembecki	Abuse: Police Officer Brandon Gembecki searched § 87(2)(b)	[REDACTED]

Case Summary

On December 14, 2017, § 87(2)(b) filed this complaint with the CCRB via telephone on behalf of himself, his father § 87(2)(b) his mother § 87(2)(b) and his sister § 87(2)(b) § 87(2)(b).

On the night of December 12, 2017, a prisoner being debriefed at the 52nd Precinct stationhouse alleged that § 87(2)(b) was in possession of a firearm. Based on this tip, Sgt. Amadeo Oktrova, PO Brandon Gembecki, PO Brian Doherty and PO Christopher Hansen of the 52nd Precinct traveled to § 87(2)(b)'s residence at § 87(2)(b) in the Bronx. They arrived at approximately 3:00 a.m. on December 13, 2017. At the time, § 87(2)(b) § 87(2)(b) and § 87(2)(b) were inside of the apartment. § 87(2)(b) was not present at the time.

Sgt. Oktrova, PO Gembecki and PO Hansen went directly to the apartment. PO Doherty was assigned to watch the windows of the apartment from the roof of § 87(2)(b). Sgt. Oktrova knocked on the door and spoke to § 87(2)(b) and § 87(2)(b) at the entrance. He explained that he had come to investigate a report that § 87(2)(b) had a firearm in the apartment. § 87(2)(b) invited the officers inside. At approximately the same time, PO Doherty allegedly observed § 87(2)(b) throw an object out of his bedroom window. PO Doherty reported this observation to Sgt. Oktrova via radio. § 87(2)(b) emerged from his bedroom immediately after PO Doherty's report. The officers in the apartment arrested § 87(2)(b) and placed him in handcuffs. PO Doherty retrieved the objects that § 87(2)(b) had allegedly discarded, finding several bullets and a plastic bag containing marijuana.

After § 87(2)(b) was handcuffed, § 87(2)(b) returned to the apartment. After § 87(2)(b) arrival, Sgt. Oktrova asked § 87(2)(b) to sign a consent to search form so that the officers could search the apartment for weapons. Sgt. Oktrova and PO Gembecki allegedly threatened to arrest the entire family if § 87(2)(b) did not sign the form (**Allegations A and B: Abuse of Authority – Threat of arrest, § 87(2)(g)**). § 87(2)(b) asked for an officer to translate the form into Spanish for him. Sgt. Oktrova summoned Sgt. Dagoberto Rodriguez to the apartment. Sgt. Rodriguez explained to § 87(2)(b) in Spanish what the form said. § 87(2)(b) then signed the form. Sgt. Oktrova and PO Doherty then went on to search the apartment (**Allegations C and D: Abuse of Authority – Search, § 87(2)(g)**). Nothing was found.

§ 87(2)(b) became frustrated with the situation and left the apartment. She was carrying a handbag at the time. Sgt. Oktrova and PO Gembecki allegedly followed § 87(2)(b) out of the apartment. In the hallway, PO Gembecki allegedly took § 87(2)(b) handbag and looked through its contents (**Allegation E: Abuse of Authority – Search, § 87(2)(g)**). He returned the bag to § 87(2)(b) without taking anything from it.

After the apartment was searched, the officers transported § 87(2)(b) back to the stationhouse. He was arrested for § 87(2)(b). None of the other civilians were arrested.

§ 87(2)(b) recorded portions of the incident on his cell phone. The video is attached in IAs #57-60 (See Board Review #01-04: Video Footage). A transcription of the video is attached in IA #72 (See Board Review #05: Video Summary). Relevant portions of the video have been attached below.

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Amadeo Oktrova threatened to arrest § 87(2)(b) and § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Brandon Gembecki threatened to arrest § 87(2)(b) and § 87(2)(b)

Allegation (C) Abuse of Authority: Sergeant Amadeo Oktrova searched § 87(2)(b) in the Bronx.

Allegation (E) Abuse of Authority: Police Officer Brian Doherty searched § 87(2)(b) in the Bronx.

An attorney was consulted in regards to these allegations.

It is undisputed that after officers entered § 87(2)(b) and arrested § 87(2)(b) Sgt. Oktrova asked § 87(2)(b) for consent to search the apartment. He presented § 87(2)(b) with a consent to search form. He then summoned Sgt. Rodriguez to the apartment and had him translate the form's text into Spanish for him. § 87(2)(b) gave the officers permission to search the entirety of the apartment. Sgt. Oktrova and PO Doherty searched several rooms inside of the apartment, including § 87(2)(b)'s and § 87(2)(b) shared bedroom, the living room and the bathroom. Nothing was found during this search.

§ 87(2)(b) was interviewed at the CCRB on December 29, 2017 (See Board Review #06: § 87(2)(b)'s Statement). He alleged that Sgt. Oktrova and PO Gembecki both told his family that they wanted to search the apartment. The officers then stated that if the family did not consent, then § 87(2)(b) § 87(2)(b) and § 87(2)(b) would also be arrested along with § 87(2)(b) § 87(2)(b) initially stated that she did not want the officers to search the apartment. § 87(2)(b) told her to consent to the search in order to protect their parents. After Sgt. Rodriguez came to the apartment and translated the contents of the consent to search form into Spanish, § 87(2)(b) was uncertain of whether to sign it or not. § 87(2)(b) persuaded him to sign the form in order to prevent the officers from arresting everybody else in the apartment. Once the form was signed, Sgt. Oktrova and PO Gembecki searched § 87(2)(b)'s and § 87(2)(b) shared bedroom. While they were doing so, another unidentified officer removed § 87(2)(b) from the apartment. § 87(2)(b) did not observe the officers' subsequent actions in the apartment, but was later told by his family that they searched the rest of the apartment after he left.

§ 87(2)(b) was interviewed at the CCRB on January 26, 2018 (See Board Review #07: § 87(2)(b)'s Statement). He stated that Sgt. Oktrova first produced the consent to search form and asked § 87(2)(b) to sign it. The form was written in English. § 87(2)(b) speaks passable English, but had difficulty understanding what was written on the form. He asked Sgt. Oktrova to translate it. Sgt. Rodriguez came to the apartment and translated the form's contents into Spanish.

Sgt. Oktrova and PO Gembecki then told § 87(2)(b) that everybody in the apartment would be arrested if he did not sign the form. They explained that this would be done in order to preserve any evidence inside of the apartment while they obtained a search warrant. § 87(2)(b) signed the form in order to prevent his family from being arrested. He made no mention of discussing this decision with any of his relatives. After § 87(2)(b) signed the form, Sgt. Oktrova and PO Gembecki searched § 87(2)(b) s and § 87(2)(b) shared bedroom. Another unidentified officer searched the bathroom and kitchen. The officers then converged in the living room and searched around the cushions of the couch there. Nothing was found during the search.

§ 87(2)(b) was interviewed at the CCRB on January 26, 2018 (See Board Review #08: § 87(2)(b) Statement). She stated that after § 87(2)(b) was handcuffed, Sgt. Rodriguez came to the apartment and spoke to her in Spanish. Sgt. Rodriguez showed her a consent to search form and told her that the form would give the officers permission to search the apartment. § 87(2)(b) told Sgt. Rodriguez that she had no issue with the officers searching her apartment, as she had nothing to hide from them. Neither she nor any of the other family members, however, actually signed the form.

During his sworn statement, § 87(2)(b) stated that his sister § 87(2)(b) was present during the incident. He provided contact information for her. On January 16, 2018, § 87(2)(b) stated that § 87(2)(b) had left the country and would be gone for several weeks. On March 21, 2018, § 87(2)(b) stated that § 87(2)(b) has taken a job overseas and will not return to the United States for several months. He and his family did not know how to reach § 87(2)(b) while she is abroad. As such, § 87(2)(b) could not be reached for a statement.

§ 87(2)(b) recorded portions of the incident on his cell phone. The various videos that he recorded were not continuous. Only one of the clips depicted any part of the conversation regarding consent to search the apartment. The clip depicts Sgt. Rodriguez reading from a consent to search form and translating it into Spanish. No other statements are heard on the recording (See Board Review #02: Video Footage).



201710338 - Video 2.3gp

Sgt. Oktrova was interviewed at the CCRB on March 28, 2018 (See Board Review #09: Sgt. Oktrova's Statement). He stated that after § 87(2)(b) was arrested, he wanted to search the apartment to determine if there were any firearms or additional ammunition beyond what § 87(2)(b) allegedly threw out of the window. Sgt. Oktrova told § 87(2)(b) in English that he wanted to search the apartment, and that he could do so either by obtaining § 87(2)(b) s consent or by obtaining a search warrant from a judge. Sgt. Oktrova noted during his interview that if he had been forced to obtain a search warrant, he would have placed a "freeze" on the apartment by removing the occupants and closing the apartment in order to preserve any evidence that might have been concealed inside. Sgt. Oktrova denied that he told § 87(2)(b) that he might freeze the apartment, or that any of the civilians inside might be forcibly removed. He denied telling any of the civilians that anybody would be placed under arrest if consent was not provided. Sgt. Oktrova produced a consent to search form and summoned Sgt. Rodriguez to

translate it. Once § 87(2)(b) signed the form, Sgt. Oktrova and PO Doherty searched the apartment. Nothing was found inside.

Sgt. Rodriguez was interviewed at the CCRB on May 4, 2018 (See Board Review #10: Sgt. Rodriguez's Statement). He stated that Sgt. Oktrova called him to the § 87(2)(b) family's apartment in order to translate the contents of the consent to search form into Spanish. Sgt. Oktrova also had Sgt. Rodriguez explain to § 87(2)(b) that he would obtain a search warrant if consent was not provided. Sgt. Rodriguez denied that he told any of the civilians that they would be forcibly removed from the apartment or arrested if consent was not provided. He denied that Sgt. Oktrova asked him to communicate such a statement to the civilians in Spanish. § 87(2)(b) signed the consent to search form after Sgt. Rodriguez translated its contents for him.

PO Doherty was interviewed at the CCRB on May 4, 2018 (See Board Review #11: PO Doherty's Statement). He stated that he was positioned on the roof of the building at the start of the incident, and did not come into the apartment until after § 87(2)(b) was arrested. He entered the apartment while Sgt. Rodriguez was translating the consent to search form into Spanish. He denied hearing any other discussion between the civilians and the officers about consent to search the apartment. He did not recall hearing Sgt. Oktrova or any other officers tell the civilians that they would be arrested or forcibly removed from the apartment if they did not allow officers to conduct a search. He did not recall hearing any officers discuss the possibility of obtaining a search warrant or placing a freeze on the apartment.

PO Gembecki was interviewed at the CCRB on March 23, 2018 (See Board Review #12: PO Gembecki's Statement). He stated that Sgt. Oktrova did discuss the issue of consent with § 87(2)(b). He did not recall what was said during this conversation. PO Gembecki recalled that an officer presented § 87(2)(b) with a consent to search form at one point. He did not recall who provided it to § 87(2)(b). He did not recall any officers translating the form into Spanish. He did not recall what, if any, conversation took place between officers and § 87(2)(b) about obtaining his consent to search the apartment. He was not aware of any officer threatening to arrest or otherwise remove any civilians from the apartment. He did not hear any officers discussing the possibility of placing a "freeze" on the apartment while a search warrant was obtained. PO Gembecki left the apartment before Sgt. Oktrova's conversation with § 87(2)(b) concluded. He was aware that a search was later conducted, but he did not witness it himself.

§ 87(2)(b) signed a consent to search form during the incident. The form granted officers permission to search the entirety of the apartment (See Board Review #13: Consent to Search Form).

Absent a search warrant, an officer may search a private residence with the owner's consent. This consent must be the product of a knowing and intelligent decision by the owner. It cannot be obtained through coercion or misdirection. An explanation of likely investigative steps that would be taken if consent was not provided, such as obtaining and executing a search warrant at the residence, would not render the consent invalid, provided that the explanation was factual in nature. People v. Yuruckso, 297 A.D.2d 299 (App. Term, 2nd Dept., 2002) (See Board Review #14: Legal Reference).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Allegation (E) Abuse of Authority: Police Officer Brandon Gembecki searched § 87(2)(b)
[REDACTED]

§ 87(2)(b) alleged that after § 87(2)(b) signed the consent to search form, § 87(2)(b) told the gathered officers that she was going to go smoke a cigarette in the hallway outside of the apartment. § 87(2)(b) was carrying a handbag at the time. After she left, Sgt. Oktrova and PO Gembecki followed her. § 87(2)(b) was able to see them in the hallway from where he was positioned inside of the apartment. PO Gembecki took § 87(2)(b) bag from her and looked through its contents. He then handed the bag back to her. He did not remove any objects from the bag.

§ 87(2)(b) also stated that § 87(2)(b) told the officers that she was going to smoke a cigarette outside. He alleged that Sgt. Oktrova and PO Gembecki told § 87(2)(b) that she would only be allowed to leave the apartment if she let them search her handbag. § 87(2)(b) handed the bag to one of the two officers, who looked through its contents. § 87(2)(b) did not identify which officer took this action. The officer then handed the bag back to § 87(2)(b) without removing anything from it.

§ 87(2)(b) denied witnessing any officers take or search § 87(2)(b) bag. She did not witness any interactions between § 87(2)(b) and the officers beyond § 87(2)(b) accusing the officers of harassing the family.

As discussed earlier, § 87(2)(b) has left the country and will not return for several months. Her family does not know of a way that she can be contacted while abroad. As such, a statement could not be obtained from her.

During his sworn statement, § 87(2)(b) showed video footage on his phone that had been taken during the incident by § 87(2)(b). One of the clips depicted Sgt. Oktrova and PO Gembecki standing in a hallway. PO Gembecki is seen passing a handbag to a person off-screen. The other person is not visible. The video does not show how PO Gembecki obtained the bag or if he looked inside of it. § 87(2)(b) was unable to provide a copy of the video due to technical issues with his phone. § 87(2)(b) later provided copies of the recordings that he made during the incident. § 87(2)(b) did not have the clip showing PO Gembecki handling the bag in his possession and was unable to provide it to the CCRB.

None of the officers recalled § 87(2)(b) or any other civilians asking to leave the apartment. They did not recall any officer searching a civilian's bag or asking to search a civilian's bag. They did not recall any searches being conducted on any of the civilians' persons.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which any of the civilians have been a party (See Board Review #15: Civilian CCRB Histories).
- Sgt. Oktrova has been a member of the service for seven years and has been a subject in three CCRB complaints and eight allegations, none of which were substantiated. § 87(2)(g)
- PO Doherty has been a member of the service for four years and has been a subject in six CCRB complaints and twelve allegations, of which three were substantiated:
 - 201510362 involved two substantiated stop allegations against PO Doherty. The Board recommended formalized training and the NYPD declined to prosecute.
 - 201605007 involved a substantiated stop allegation. The Board recommended that he receive command discipline A. The NYPD imposed formalized training.
 - 201700793 involved a substantiated vehicle search allegation. The Board recommended that he receive command discipline B. The NYPD has not yet imposed discipline.

- PO Gembecki has been a member of the service for seven years and has been a subject in six CCRB complaints and fourteen allegations, of which one was substantiated:
 - 201500979 involved a substantiated allegation of retaliatory summons. The Board recommended that he receive formalized training. The NYPD administered formalized training.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- A Notice of Claim request was submitted to the NYC Office of the Comptroller on May 23, 2018. It will be included in the case file upon receipt.
- § 87(2)(b)'s criminal case resulting from his arrest during this case is still open. His next court date is on § 87(2)(b).
- According to the Office of Court Administration (OCA), § 87(2)(b) and § 87(2)(b) have no histories of convictions in New York City.
- § 87(2)(b)

Allegations Not Pleaded

- It is undisputed that § 87(2)(b) recorded portions of the incident inside of the apartment on his cell phone. § 87(2)(b) alleged that after the incident, § 87(2)(b) told him that while the officers were searching the apartment, they told § 87(2)(b) that he was not allowed to record. § 87(2)(b) ceased recording as instructed. This allegedly occurred after § 87(2)(b) was removed from the apartment. § 87(2)(b) made no mention of this allegation. A review of the videos taken by § 87(2)(b) found no instances of any officers telling § 87(2)(b) to stop recording. The officers address § 87(2)(b) directly throughout the recordings, and tell him numerous times that he is free to record. Therefore, an interference with a recording device allegation has not been pleaded.

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer:

Signature

Print Title & Name

Date